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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/646,929	11/09/2000	John Reipur	459-479P	2561

2292 7590 05/16/2005

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EXAMINER

GANEY, STEVEN J

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/646,929

Applicant(s)

REIPUR, JOHN

Examiner

Steven J. Ganey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-28 is/are allowed.
- 6) ☒ Claim(s) 1,2,5,6,8,9,14 and 16-18 is/are rejected.
- 7) ☒ Claim(s) 3,4,7,10-13,15 and 19-23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant is advised that the Notice of Allowance mailed September 26, 2002 is vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a specified Deposit Account.
2. Prosecution on the merits of this application is reopened on claims 1, 2, 5, 6, 8, 9, 14 and 16-18 are considered unpatentable for the reasons indicated below:

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 5, 6, 8, 9, 14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okano et al.

Okano et al shows an apparatus for producing gas flow comprising a tubular body 1/200 having an open first end 2 and a second end of the tubular body to a gas outlet of an electric gas compressor 100, a switch 106, and a liquid 51 being introduced into the open first end of the tubular body via a liquid delivery tube 10, except for the gas compressor being a piston

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compressor having a plurality of pistons and cylinders. Note, that Okano et al shows a diaphragm compressor with a plurality of diaphragms 116, see Fig. 32. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the diaphragm compressor with a piston compressor having a plurality of pistons and cylinders, since the examiner takes Official Notice of the equivalence of a diaphragm compressor and a piston compressor for their use in the pump art and the selection of any of these known equivalents to be used as gas compressors would be within the level of ordinary skill in the art. Note, that Eggleston is presented as evidence of this equivalence, see page 1, lines 99-103.

As to claims 2 and 9, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the switch 106 of Okano et al on the tubular body at or adjacent the open first end part instead of on the compressor itself, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

As to claim 18, note, that Okano et al shows a compressor with an electric AC motor. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the AC-motor of Okano et al with a brushless DC-motor, since the examiner takes Official Notice of the equivalence of an AC-motor and a DC-motor for their use in the electric motor art and the selection of any of these known equivalents to be used as a motor for use in an electric gas compressor would be within the level of ordinary skill in the art. Note, that Ramarathnam is presented as evidence of this equivalence.

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Allowable Subject Matter

5. Claims 24-28 are allowed.
6. Claims 3, 4, 7, 10-13, 15 and 19-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Ganey whose telephone number is (571) 272-4899. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel, can be reached on (571) 272-4919. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

sjg

4/15/05


STEVEN J. GANEY
PRIMARY EXAMINER
4/15/05